

Department of Energy

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concerning this reimbursement program. The report will be available to all interested parties upon written request to the Department's National Nuclear Security Administration Service Center, Office of Technical Services, Environmental Programs Department, P.O. Box 5400, Albuquerque, NM 87185-5400 and will also be available in the Department's Freedom of Information Reading room, 1000 Independence Avenue SW., Washington, DC.

[59 FR 26726, May 23, 1994, as amended at 68 FR 32957, June 3, 2003]

Subpart D—Additional Reimbursement Procedures

§ 765.30 Reimbursement of costs incurred in accordance with a plan for subsequent remedial action.

(a) This section establishes procedures governing reimbursements of costs of remedial action incurred in accordance with a plan for subsequent remedial action approved by the Department as provided in this section. Costs otherwise eligible for reimbursement in accordance with the terms of this part and incurred in accordance with the plan shall be reimbursed in accordance with the provisions of subpart D and subpart C. In the event there is an inconsistency between the requirements of subpart D and subpart C, the provisions of subpart D shall govern reimbursement of such costs of remedial action.

(b) A licensee who anticipates incurring costs of remedial action after December 31, 2007 may submit a plan for subsequent remedial action. This plan may be submitted at any time after January 1, 2005, but no later than December 31, 2006. Reimbursement of costs of remedial action incurred after December 31, 2007 shall be subject to the approval of this plan by the Department. This plan shall describe:

(1) All applicable requirements established by NRC pursuant to UMTRCA, or where appropriate, by the requirements of an Agreement State, included in a reclamation plan approved by NRC or an Agreement State which have not yet been satisfied in full by the licensee, and

(2) The total cost of remedial action required at the site, together with all

necessary supporting documentation, segregated into actual costs incurred to date, costs incurred or expected to be incurred prior to December 31, 2007 but not yet approved for reimbursement, and anticipated future costs.

(c) The Department shall review the plan for subsequent remedial action to verify conformance with the NRC- or Agreement State-approved reclamation plan or other written authorization, and to determine the reasonableness of anticipated future costs, and shall approve, approve with suggested modifications, or reject the plan. During its review, the Department may request additional information from the licensee to clarify or provide support for any provision or estimate contained in the plan. The Department may also consult with NRC or an Agreement State concerning any provision or estimate contained in the plan. Upon approval, approval with modifications, or rejection of a plan, the Department shall inform and explain to the licensee its decision.

(d) If the Department rejects a plan for subsequent remedial action submitted by a licensee, the licensee may appeal the Department's rejection or prepare and submit a revised plan. The licensee may continue to submit revised plans for subsequent remedial action until the Department approves a plan, or September 30, 2007, whichever occurs first. A failure by a licensee to receive approval from the Department of a plan prior to December 31, 2007 will preclude that licensee from receiving any reimbursement for costs of remedial action incurred after that date.

(e) The Department shall determine, in approving a plan for subsequent remedial action, the maximum reimbursement amount for which the licensee may be eligible. This maximum reimbursement amount shall be the smaller of the following two quantities:

(1) The amount obtained by multiplying the total cost of remedial action at the site, as determined in the approved plan for subsequent remedial action, by the Federal reimbursement ratio established for such site; or

(2) For the uranium site licensees only, \$6.25, as adjusted for inflation, multiplied by the number of Federal-

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related dry short tons of byproduct material. For all licensees, the Department shall subtract from the maximum reimbursement amount any reimbursement already approved to be paid to the licensee. The resulting sum shall be the potential additional reimbursement to which the licensee may be entitled. This resulting sum will be adjusted after the approval of claims for work performed through December 31, 2007, to reflect the actual approved costs of work performed through that date.

[59 FR 26726, May 23, 1994, as amended at 68 FR 32957, June 3, 2003]

§ 765.31 Designation of funds available for subsequent remedial action.

(a) The Department shall authorize reimbursement of costs of remedial action, incurred in accordance with an approved plan for subsequent remedial action and approved by the Department as specified in subpart C to this part, to be made from the Fund. These costs are reimbursable until:

(1) This remedial action has been completed, or

(2) The licensee has been reimbursed its maximum reimbursement amount as determined by the Department pursuant to paragraph (e) of § 765.30.

(b) A licensee shall submit any claim for reimbursement of costs of remedial action incurred pursuant to an approved plan for subsequent remedial action in accordance with the requirements of subpart C of this part. The Department shall approve, approve in part, or deny any claims in accordance with the procedures specified in subpart C of this part. The Department shall authorize the disbursement of funds upon approval of a claim for reimbursement.

(c) After all remedial actions have been completed by affected Agreement State or NRC licensees, the Department will issue a Federal Register notice announcing a termination date beyond which claims for reimbursement will no longer be accepted.

[59 FR 26726, May 23, 1994, as amended at 68 FR 32958, June 3, 2003]

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§ 765.32 Reimbursement of excess funds.

(a) No later than December 31, 2008, the Department shall determine if the aggregate amount authorized for appropriation pursuant to section 1003 of the Act (42 U.S.C. 2296a-2), as adjusted for inflation pursuant to § 765.12, exceed as of that date the combined total of all reimbursements which have been paid to licensees under this part, any amounts approved for reimbursement and owed to any licensee, and any anticipated additional reimbursements to be made in accordance with approved plans for subsequent remedial action.

(b) If the Department determines that the amount authorized pursuant to section 1003 of the Act (42 U.S.C. 2296a-2), as adjusted for inflation, exceed the combined total of all reimbursements (as indicated in paragraph (a) of this section), the Department may establish procedures for providing additional reimbursement to uranium licensees for costs of remedial action, subject to the availability of appropriated funds. If the amount of available excess funds is insufficient to provide reimbursement of all eligible costs of remedial action, then reimbursement shall be paid on a prorated basis.

(c) Each eligible uranium licensee's prorated share will be determined by dividing the total excess funds available by the total number of Federal-related dry short tons of byproduct material present at the site where costs of remedial action exceed \$6.25 per dry short ton, as adjusted for inflation pursuant to § 765.12. The resulting number will be the maximum cost per dry short ton, over \$6.25, that may be reimbursed. Total reimbursement for each licensee that has incurred approved costs of remedial action in excess of \$6.25 per dry short ton will be the product of the excess cost per dry short ton multiplied by the number of Federal-related dry short tons of byproduct material at the site or the actual costs incurred and approved by the Department, whichever is less.

(d) Any costs of remedial action for which reimbursement is sought from excess funds determined by the Department to be available is subject to all requirements of this part except the